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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/932,622 | 08/17/2001 | William R. Kowalski | 2001-5 | 6302 |

7590 03/13/2006

Martin E. Hsia
P. O. Box 939
Honolulu, HI 96808-0939

EXAMINER

MAHAFKEY, KELLY J

| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

The Amendment filed December 19, 2005 has been entered.

Claims 5, 12, 15, 16, 19, 21-23, 25-102 have been canceled.

Claims 1-4, 6-11, 13, 14, 17, 18, 20, 24, and 103-109 remain pending.

Claim Objections

1. Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1 recites introducing a treatment gas, wherein the introducing step is performed using partially purified smoke. Claim 8 recites wherein the introducing step is performed using a gas that contains carbon monoxide. One could infringe on claim 8 without infringing on claim 1 by introducing pure CO.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4, 6-11, 13, 14, 17, 18, 20, 24, 105, 106, and 109 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1761

4. Claims 1, 6-11, 13, 14, 17, 20, 24, are rejected under 35 U.S.C. 112, second paragraph. Claim 1 recites, "Introducing a treatment gas through water... wherein the introducing step is performed using a partially purified smoke". It is unclear if the treatment gas is the partially purified smoke, or if the partially purified smoke is added in addition to the treatment gas. To expedite the examination process, the examiner will consider the claim as reciting, "Introducing a treatment gas through water... wherein the said treatment gas is a partially purified smoke". Claims 6-11, 13, 14, 17, 20, 24, are rejected because of their dependency on claim 1.

5. Claim 2 recites, "causing said live animal to inhale a treatment fluid... wherein said causing step is performed using partially purified smoke". It is unclear if the treatment fluid is the partially purified smoke, or if the partially purified smoke is added in addition to the treatment fluid. To expedite the examination process, the examiner will consider the claim as reciting, "Introducing a treatment fluid through water... wherein the said treatment fluid is a partially purified smoke".

6. Claim 3 recites, "Exposing said respiratory system to water containing gaseous smoke... wherein said exposing step is performed using partially purified smoke". It is unclear if the gaseous smoke is the partially purified smoke, or if the partially purified smoke is added in addition to the gaseous smoke. To expedite the examination process, the examiner will consider the claim as reciting, "Introducing a gaseous smoke through water... wherein the said gaseous smoke is a partially purified smoke".

7. Claims 4, 105, and 109 recite, "introducing said dissolved treatment gas... wherein said introducing step is performed using a treatment gas". It is unclear if the

Art Unit: 1761

said dissolved treatment gas is the treatment gas, or if the treatment gas is added in addition to the said dissolved treatment gas. To expedite the examination process, the examiner will consider the claim as reciting, "Introducing a said dissolved treatment gas... wherein the said introducing step is performed using said dissolved treatment gas".

8. Claim 17 recites the limitation "a process according to claim 1... mass-treatment of groups of said animals". There is insufficient antecedent basis for this limitation in the claim. Claim 1 recites "a animal". To expedite the examination process, examiner will consider the claim as reciting, "a process according to claim 1... mass-treatment of groups of more than one of said animal."

9. Claims 18 and 106 recite, "providing a live animal having respiratory and circulatory systems for said meat; introducing..." It is unclear how meat or flesh can have respiratory or circulatory systems. To expedite the examination process, the examiner will consider the claim as reciting, "providing a live animal having respiratory and circulatory systems; introducing..." Claims 18 and 106 also recite, "introducing a treatment gas... wherein said introducing step is performed using gas derived from raw smoke". It is unclear if the treatment gas is the raw smoke, or if the treatment gas is added in addition to the raw smoke. To expedite the examination process, the examiner will consider the claim as reciting, "introducing a treatment gas ... wherein said treatment gas is derived from raw smoke".

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-4, 6, 7, 9-11, 13, 14, 17, 18, 24, and 103-109 are rejected under 35 U.S.C. 102(b) as being anticipated by Hisateru (JP Pub No. 53-139754).

12. Hisateru teaches of a process for preserving and storing fish, including tuna, in which carbon dioxide is dissolved underwater and the fish blood of the circulatory system circulates the carbon dioxide throughout the fish body. Hisateru teaches that the carbon monoxide places the fish in a comma and preserves the fish by binding to the fish proteins. Hisateru teaches that the fish can be frozen after treatment with the gas. Refer specifically to pages 1-6.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 1761

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hisateru as applied to claims 1-4, 6, 7, 9-11, 13, 14, 17, 18, 24, and 103-109 above.

16. Hisateru teaches of a process for preserving and storing fish as discussed above. The only difference between the reference and the claims is that the reference is silent in teaching bleeding the animal before its heart stops pumping as recited in claim 20. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the step of bleeding the animal before the heart stopped pumping as recited in claim 20. One would have been motivated to do so in order to use the energy of the animal to help complete the preservation and storage process.

17. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hisateru as applied to claims 1-4, 6, 7, 9-11, 13, 14, 17, 18, 24, and 103-109 above and in view of Yamaoka et al. (US 5484619).

18. Hisateru teaches of a process for preserving and storing fish as discussed above. The only difference between the reference and the claims is that the reference is silent in teaching the preserving gas as carbon monoxide as recited in claim 8.

Yamoke et al. (Yamaoka) discloses of a method for preserving fish and meat. Yamoke teaches of a gas that contains carbon monoxide and carbon dioxide. Yamoke teaches that the combination of the carbon monoxide and carbon dioxide combination gas

Art Unit: 1761

provides for the maximum sterilization and decomposition and discoloration-preventing effects obtainable. Refer specifically to Abstract, Figure 2B, Column 1 lines 13-49 and Column 2 lines 1-10, 40-63. Because Hisateru teaches of entraining gas, with carbon dioxide, into water in order to preserve the fish, and since Yamaoka teaches of a gas with carbon monoxide and carbon dioxide provides the maximum preserving effects for fish, one would have been motivated to include carbon monoxide in the preserving gas in order to get the maximum preserving effects in the meat (i.e. fish). Because they both teach of a method for preserving fish, and since Hisateru teaches of entraining gas, with carbon dioxide, into water in order to preserve the fish, and since Yamaoka teaches of a gas with carbon monoxide and carbon dioxide provides the maximum preserving effects for fish, one would have a reasonable expectation of success from the combination.

Response to Arguments

19. Applicant's arguments, see pages 11-13, filed December 19, 2005, with respect to the rejection(s) of claim(s) 2, 3, 17, 24, 103, 104, 107, and 108 under 103(a) have been fully considered and are persuasive regarding the combination of the Kowalski and Iimura references. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Hisateru. See above.

20. Applicant's arguments, see page 11, filed December 19, 2005, with respect to the rejection(s) of claim(s) 1, 4, 6, 7, 9-14, 18, 105, 106, and 109 under 102(b) have

Art Unit: 1761

been fully considered and are persuasive regarding the injection of a fluid directly into the circulatory system of a fish. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Hisateru.

See above.

21. Regarding Yamaoka as teaching the introduction of water entrained with a partially purified smoke through both the respiratory and circulatory systems, applicant's arguments, see pages 13-14, filed December 19, 2005, are persuasive. However, upon further consideration, a new ground(s) of rejection is made in view of Hisateru. See above.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

23. US 4522835 discloses of a process and composition for producing and maintaining good color in fresh meat and fish. US 4522835 discloses of the reactions between carbon monoxide and carbon dioxide with hemoglobin in order to form carboxymyoglobin.

24. US 4343304 discloses of inhalation therapy for meat.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.


Art Unit: 1761

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 3/6/06

Kelly Mahafkey
Examiner
Art Unit 1761


KEITH HENDRICKS
PRIMARY EXAMINER

~~KEITH HENDRICKS~~
~~PRIMARY EXAMINER~~